



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
January 17, 2024

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re: Case No. 23-10423-mkn
CASH CLOUD, INC., Chapter 11
dba COIN CLOUD,)
Debtor.) Date: October 19, 2023
) Time: 10:30 a.m.
)

**ORDER ON DEBTOR'S OBJECTION TO ADMINISTRATIVE EXPENSE CLAIM OF
AVT NEVADA, L.P.¹**

On October 19, 2023, the court heard the Debtor's Objection to Administrative Expense Claim of AVT Nevada, L.P., brought in the above-captioned proceeding. The appearances of counsel were noted on the record. After the hearing, the matter was taken under submission.

BACKGROUND

On February 7, 2023, Cash Cloud, Inc. dba Coin Cloud ("Debtor") filed a voluntary "skeleton" Chapter 11 petition ("Petition"). (ECF No. 1). The meeting of creditors under Section 341 ("341 Meeting") was scheduled for March 16, 2023, as well as a deadline of June 14, 2023, for proofs of claim to be filed. (ECF No. 2). Under Section 1121, the exclusive periods for the Debtor to file a proposed Chapter 11 plan as well as to obtain plan acceptance were June 7, 2023, and August 5, 2023, respectively. See 11 U.S.C. §§ 1121(b) and 1121(c)(3).

On February 17, 2023, an official committee of unsecured creditors ("UCC") was

¹ In this Order, all references to "ECF No." are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the Clerk of Court. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure.

1 appointed. (ECF No. 131).

2 On March 9, 2023, Debtor filed its schedules of assets and liabilities (“Schedules”) along
 3 with its statement of financial affairs. (ECF Nos. 239 and 240). On its secured creditor Schedule
 4 “D,” Debtor listed six creditors: Cole Kepro International, LLC, Corporation Service Company
 5 as Representative,² Enigma Securities LTD, Genesis Global Holdco, LLC, Prime Alliance Bank,
 6 Inc., and Surety Bank. On its executory contract and unexpired lease Schedule “G,” Debtor
 7 listed numerous parties with whom it had entered into executory contracts or unexpired leases
 8 prior to commencement of the Chapter 11 proceeding.³

9 On March 27, 2023, AVT filed an official Proof of Claim form signed under penalty of
 10 perjury by its portfolio manager (“POC 38”).⁴ Part 2 of the form attests that the basis for the
 11 claim is “Equipment Lease CSHC 001.” Part 2 also attests that the claim is secured by
 12 “Equipment” and is perfected by “UCC filing statements.” Part 2 further states that the secured
 13 amount of the claim is \$1,314,335. Attached to POC 38 is a variety of documents, including a
 14 Master Lease Agreement dated June 5, 2020 (“Master Lease”). Attached to the Master Lease are

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 16 ² For this creditor, Debtor is asked to “Describe debtor’s property that is subject to the
 17 lien.” Debtor’s response is: “All deposits, payments and other money pledged, paid, provided to
 18 or held by Security Party in connection with Lease Schedule No. CSHC_001 to Master Lease
 Agreement No. 2056266, between AVT Nevada, L.P. and Debtor.” The creditor is described by
 the Debtor as “UCC Lienholder.”

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 20 ³ Schedule “G” includes an Attachment that lists the subject executory contracts and
 21 unexpired leases. At page 58 of 94, with ID No. 2.248, there is a Master Lease Agreement No.
 22 2056266 having an effective date on 6/5/2020 with the counterparty identified as “AVT Nevada,
 L.P.” In other words, AVT Nevada, L.P. (“AVT”) is mentioned by the Debtor in its Schedules
 applicable to secured creditors as well as executory contracts and unexpired leases.

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 24 ⁴ The instructions to Official Form 410 - Proof of Claim specifically states: “This form is
 25 for making a claim for payment in a bankruptcy case. Do not use this form to make a request for
 26 payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.” Part
 27 3 of Official Form 410 requires the claimant to specify its status, to acknowledge that any
 28 payments have been credited, to have examined the information provided, and to declare under
 penalty of perjury that the information is true and correct. The capacity of the individual signing
 the claim must be stated. Official Form 410 includes in bold print the admonition: “A person
 who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.
 18 U.S.C. §§ 152, 157, and 3571.”

1 various documents, including a personal guaranty, a bill of sale, a sale leaseback agreement, a
 2 security agreement, and three separate UCC financing statements.⁵

3 On June 16, 2023, Debtor filed a motion to approve a lien free sale of certain assets to a
 4 third-party purchaser, including the some or all of the equipment encompassed by POC 38 (“Sale
 5 Motion”). (ECF No. 714).⁶ On June 19, 2023, the Sale Motion was amended. (ECF No. 730).⁷

6 On June 28, 2023, the Sale Motion was granted over the objection of AVT.⁸

7 On June 30, 2023, an order granting the Sale Motion (“Sale Order”) was entered. (ECF
 8 No. 795).⁹ The Sale Order was not appealed nor stayed.

9 On July 11, 2023, an order was entered establishing a deadline of July 20, 2023, for
 10 proofs of administrative expense claims to be filed, including approval of the form for submitting
 11 an administrative claim (“Administrative Claims Bar Order”). (ECF No. 823). The order does
 12 not specify the schedule by which “notice and a hearing” required by Section 503(b) would be
 13 provided for the bankruptcy court to allow an administrative claim.¹⁰

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15 ⁵ The UCC Financing Statement with Initial Filing Number 2020095113-1 was filed on
 16 May 12, 2020. The statement with Initial Filing Number 2020103557-0 was filed on June 9,
 17 2020. The statement with Initial Filing Number 202301974-8 with filed on January 31, 2023.

18 ⁶ An expedited hearing on the Sale Motion was scheduled for June 28, 2023, pursuant to
 19 an order shortening time. (ECF No. 724). The deadline for written opposition was set at June
 20 23, 2023. Notice of the expedited hearing was sent by first class mail to all interested parties,
 21 including AVT. (ECF No. 733).

22 ⁷ Notice of filing the amended motion was sent to all interested parties. (ECF No. 739).

23 ⁸ On June 29, 2023, AVT filed its written objection to the Sale Motion. (ECF No. 785).

24 ⁹ Notice of entry of the Sale Order was sent to all interested parties. (ECF No. 802).

25 ¹⁰ Section 502 and Section 503 distinguish between the allowance of claims and interests,
 26 and the allowance of administrative expenses. Section 502(a) expressly provides that a proof of
 27 claim filed under Section 501(a) with respect to a claim or interest, “is deemed allowed” unless a
 28 party in interest objects. By contrast, Section 503(a) administrative expenses may be allowed
 only after notice and a hearing. In other words, simply filing an administrative claim form is not
 sufficient for the claimed expense to be allowed by the bankruptcy court. The Administrative
 Claims Bar Order simply established a deadline for requests for administrative expenses to be
 filed and no more.

1 On July 18, 2023, AVT filed a copy of the approved Administrative Claim Form (ECF
 2 No. 887) signed by its counsel of record (“Claim 887”).¹¹ The stated basis for the administrative
 3 claim is the Debtor’s “Post-petition use of leased equipment in operation of Debtor’s business.”
 4 Priority of payment is asserted under Section 503(b)(1)(A) and Section 507(a)(2). The amount
 5 of the claim is \$262,719.30. Attached to Claim 887 is an addendum explaining the basis for the
 6 claim to which is attached as Exhibit “A” a copy of portions of the Master Lease and as Exhibit
 7 “B” an Amended and Restated Lease Schedule No. CSHC 001 executed on September 1, 2020
 8 (“Schedule”).¹²

9 On August 25, 2023, an order was entered confirming the Debtor’s First Amended
 10 Chapter 11 Plan of Reorganization Dated August 1, 2023 (“Plan Confirmation Order”). (ECF
 11 No. 1126).¹³ The Plan Confirmation Order was not appealed nor stayed.

12 On September 19, 2023, Debtor filed the instant objection to Claim 887 (“Objection”),
 13 accompanied by the declaration of its counsel, Brett Axelrod (“Axelrod Declaration”). (ECF
 14 Nos. 1258 and 1259).

15 On October 5, 2023, AVT filed its response to the Objection (“Response”), accompanied
 16 by a declaration from its portfolio manager, Dan Burris. (ECF Nos. 1351 and 1352).

17 On October 12, 2023, Debtor filed its reply in support of its Objection (“Reply”). (ECF
 18 No. 1372).¹⁴

19 ¹¹ The Administrative Claim Form is not required to be signed under penalty of perjury
 20 and contains none of the admonitions included in Official Form 410, see note 4, supra, except for
 21 the following language at the bottom of the page (but not part of the signature line): “Penalty for
 22 presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years, or
 23 both. 18 U.S.C. §§ 152 AND 3571.” FRBP 9009(a) permits “minor changes” to an Official
 24 Form, but eliminating the oath requirement from Official Form 410 is not minor.

25 ¹² On July 20, 2023, the court heard a separate motion filed by creditor Transgistics, Inc.,
 26 (ECF No. 652) seeking approval of an administrative expense claim for postpetition warehouse
 27 services. That motion was taken under submission.

28 ¹³ Notice of entry of the Plan Confirmation Order was sent to interested parties. (ECF
 29 No. 1153).

¹⁴ On October 16, 2023, an evidentiary hearing was held on a separate motion filed by
 creditor Enigma Securities Limited (ECF No. 873) seeking approval of a superpriority

DISCUSSION

A postpetition creditor may be allowed an administrative claim under Section 503(b)(1)(A) for “the actual, necessary costs and expenses of preserving” the Chapter 11 estate. The term “actual, necessary costs and expenses” under Section 503(b) is narrowly construed to keep administrative costs at a minimum. See N.L.R.B. v. Walsh (In re Palau), 139 B.R. 942, 944 (B.A.P. 9th Cir. 1992), aff’d, 18 F.3d 746 (9th Cir. 1994). The focus is on whether the claimed expenses arose from a postpetition transaction with the bankruptcy estate, and whether the transaction directly and substantially benefitted the bankruptcy estate. See Microsoft Corp. v. DAK Industries, Inc. (In re DAK Industries, Inc.), 66 F.3d 1091, 1094 (9th Cir. 1995); see also Data Leverage, LLC v. Avery (In re Machevsky), 640 B.R. 210, 214 (C.D. Cal. 2022); Saxton v. Lisowski (In re Saxton, Inc.), 2007 WL 7540972, at *5 (B.A.P. 9th Cir. July 30, 2007). The burden of proving the requirements for allowance of an administrative expense claim rests with the claimant. See In re DAK Industries, 66 F.3d at 1094; In re MyLife.com Inc., 2023 WL 5976726, at *4 (Bankr. C.D. Cal. Sep. 14, 2023).

As previously mentioned, AVT preceded the filing of Claim 887 by filing POC 38. Under Section 502(a)(1), a proof of claim is deemed allowed unless a party in interest objects. Under FRBP 3001(f), a properly filed proof of claim “shall constitute prima facie evidence of the validity and amount of the claim.” Also, as previously mentioned, POC 38 is signed under penalty of perjury by AVT’s portfolio manager. AVT simply attaches to its POC 38 copies of the Master Lease and other related materials, including a bill of sale, a security agreement, and separate UCC financing statements. While the burden of persuasion lies with the claimant, see Partap Investments, LLC v. Kittusamy, LLP (In re Kittusamy, LLP), 2017 WL 957152, at *2 (B.A.P. 9th Cir. Mar 10, 2017), the burden of production lies with the objecting party to overcome the prima facie validity afforded to a proof of claim under the Bankruptcy Code and the Bankruptcy Rules. An objecting party must overcome the presumption of validity by presenting sufficient evidence of probative force equal to the allegations of the proof of claim.

administrative expense claim based on the postpetition impairment of value of its collateral. That matter also was taken under submission.

1 See Burke v. Reno-Sparks Indian Colony (In re Affordable Patios & Sunrooms), 2022 WL
 2 1115413, at *3 (B.A.P. 9th Cir. Apr. 22, 2022); Reger v. Essex Bank (In re Landes), 626 B.R.
 3 531, 545 (Bankr. E.D. Cal. 2021). Thus, a debtor (or other interested party) can overcome the
 4 evidentiary effect of a proof of claim only by offering admissible evidence rather than
 5 unsupported argument.

6 By contrast, Claim 887 is not signed by a representative of AVT under penalty of perjury
 7 and does not constitute prima facie evidence of the validity and amount of the claim. While it
 8 may constitute a certification within the meaning of FRBP 9011(b),¹⁵ it does not have
 9 independent evidentiary value. In the present matter, however, Debtor does not dispute that
 10 AVT had an interest in certain digital currency kiosks, but argues that the Master Lease was a
 11 secured financing arrangement rather than a true lease. See Objection at 5:23 to 6:2. It
 12 maintains that AVT was a creditor with a security interest in such equipment rather than an
 13 interest as a lessor of the equipment. See Objection at 5:3-5; Axelrod Declaration at ¶¶ 4 and 5.
 14 As a result, Debtor argues that AVT is not entitled to the allowance of post-petition rent for the
 15 equipment, but would be limited to its security interest in the equipment. See Axelrod
 16 Declaration at ¶ 6. As a further result, Debtor maintains that AVT's lien against the equipment is
 17 attached to the proceeds generated from the Sale Order.

18 As the sockdolager of its position, Debtor observes that AVT was treated as a secured
 19 creditor at the expedited hearing on the Sale Motion and in the language of the Sale Order. See
 20 Objection at 6:3-7. It maintains that AVT was determined at the sale hearing to be a secured
 21 creditor rather than an equipment lessor, and therefore cannot have it "both" ways. Id. at 6:2.
 22 Debtor argues that AVT's status as a secured creditor, rather than a lessor, is the "law of the
 23 case." See Reply at 2:6-11. As a result, Debtor concludes that AVT is not entitled to rent and
 24 has no administrative claim for postpetition rent at all.

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27 ¹⁵ Under FRBP 9011(b)(3), an attorney or unrepresented party who presents a paper to
 28 the court "is certifying that to the best of the person's knowledge, information, and belief,
 formed after an inquiry reasonable under the circumstances, — the allegations and other factual
 contentions have evidentiary support..."

1 In response, AVT maintains that the language of the Sale Order as well as the Plan
 2 Confirmation Order does not preclude it from pursuing an administrative claim for postpetition
 3 rent of the subject equipment. See Response at 6:9 to 8:4. As correctly suggested by the Debtor,
 4 the Sale Order reflects that AVT's oral objection at the sale hearing was overruled by the court.
 5 See Sale Order at 3, Recital M. Additionally, the Sale Order allocated the proceeds of the sale to
 6 various creditors and expressly to AVT as follows:

7 to AVT the Sale proceeds (the "AVT Collateral Proceeds") allocated
 8 to collateral (the "AVT Collateral") securing the AVT secured claim to the
 9 extent such collateral is identified in that certain UCC Financing Statement,
 10 filed on May 12, 2020 and with initial filing number 2020095113-1 (see
 11 Claim No.38), and AVT's asserted security interest in such collateral is
 12 allowed pursuant to a final order of the Court (the "AVT Secured Claim"), up
 13 to the amount of the allowed amount of the AVT Secured Claim; provided
 14 that, upon the closing of the sales, the Debtor will (a) pay to AVT the AVT
 15 Collateral Proceeds to the extent such AVT Collateral Proceeds are in excess
 16 of (1) the Disputed Surcharge Claims against AVT and (2) any other Asserted
 17 Surcharge Claims that AVT has agreed are payable to the Debtor's estate in
 18 accordance with section 506(c) of the Bankruptcy Code and (b) hold in
 19 escrow the remaining AVT Collateral Proceeds for the sole use and purpose
 20 of distribution to AVT or payment to the Debtor's estate in respect of the
 21 Disputed Surcharge Claims, in each case in accordance with the Court's order
 22 with respect to the Surcharge Motion or as otherwise mutually agreed in
 23 writing by the Debtor and AVT. AVT reserves all rights and defenses with
 24 respect to the existence of any Asserted Surcharge Claims and any Surcharge
 25 Motion and nothing in this Order shall constitute an admission that any
 26 Asserted Surcharge Claims are valid. For the avoidance of doubt, nothing in
 27 this Order waives, modifies, alters, or impairs the waiver of surcharge in favor
 28 of the DIP Lender contained in paragraph 13 of the Final DIP Order.

Sale Order at 9, ¶ 19(b) (emphasis added). While the language of the Sale Order entered on June 30, 2023, referred to AVT as the holder of a secured claim rather than a lessor of the equipment, the court's subsequent order entered on August 25, 2023 states as follows:

AVT's Reservation of Rights. Notwithstanding any provision to the
contrary in this Confirmation Order, the Amended Plan, the Sale Order, any
DIP Financing Orders, or any Amended Plan Supplements, no provision of
the foregoing shall prejudice AVT's rights, pursuant to its lease and other
agreements with the Debtor (the "Lease") as set forth in Proof of Claim No.
38 (the "Claim") or otherwise, to without limitation (a) on or prior to any
applicable Administrative Expense Claims Bar Dates, assert, apply for, file,
prosecute, and collect any Administrative Claim against the Debtor pursuant
to the Lease, and/or (b) prior to the Effective Date, commence an adversary

1 proceeding or contested matter for (without limitation) a declaration that the
 2 AVT Collateral is in fact property owned by AVT that was leased to the
 3 Debtor, and/or alternatively that AVT's interests in the AVT Collateral are
 4 superior to the rights of other interested parties (including but not limited to
 5 the purported secured interests asserted by Enigma); and/or (c) object to,
 6 dispute, and seek disallowance of any or all Surcharge Claims that may be
 7 asserted against AVT's property (and the AVT Collateral Proceeds);
 8 provided, however, that the Debtor, the Creditor Trust, or any successors
 9 thereto, reserve all rights and defenses in connection with AVT's Claim,
 10 including without limitation the actions and/or Claims described in (a)
 11 through (c) herein. For the avoidance of doubt, AVT disputes the validity and
 12 priority of a portion of Enigma's Lien on what is defined as the Enigma
 13 Collateral in the Amended Plan (the "AVT Disputed Property"). Accordingly,
 14 pursuant to the Sale Order and the Amended Plan, the Debtor shall hold that portion of the Enigma Collateral Proceeds that are associated
 15 with AVT Disputed Property in escrow pending further order from the Court
 16 or upon a mutual agreement of Enigma and AVT submitted to the Debtor in
 17 writing.

12 Plan Confirmation Order at 16, ¶ 20 (emphasis added).

13 Pursuant to the express language of the Plan Confirmation Order, "no provision" of the
 14 Sale Order shall prejudice AVT's right to "assert, apply for, file, prosecute, and collect" any
 15 administrative claim under the Master Lease. There is no dispute that this language of the Plan
 16 Confirmation Order was negotiated amongst able counsel for the parties. Because this
 17 negotiated language effectively overcame any limiting language in the Sale Order, AVT is not
 18 barred from seeking an administrative expense allowance based on the Master Lease.

19 On the present record, the Objection is misguided because the language of the Plan
 20 Confirmation Order permits AVT to seek allowance of its administrative claim. The law of the
 21 case doctrine simply does not apply. Because Claim 887 does not constitute *prima facie*
 22 evidence of its validity and amount, however, AVT is required by Section 503(b) to seek
 23 allowance of the administrative expense. AVT is required to demonstrate that the amount sought
 24 directly and substantially benefited the Chapter 11 estate. The same provision of the Plan
 25 Confirmation Order also reserves to the Debtor "all rights and defenses in connection with
 26 AVT's Claim," which includes "any Administrative Claim against the Debtor pursuant to the
 27 Lease." Debtor's assertion that it engaged in a secured financing transaction with AVT rather
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1 than a true lease can be raised, if at all, in response to AVT's necessary request for allowance of
2 the expense.

3 Based on the foregoing, the instant Objection will be overruled without prejudice. No
4 determination is made by this order with respect to the allowance of Claim 887.

5 **IT IS THEREFORE ORDERED** that Debtor's Objection to Administrative Expense
6 Claim of AVT Nevada, L.P., Docket No. 1258, be, and the same hereby is, **OVERRULED**
7 **WITHOUT PREJUDICE.**

8 Copies sent via CM/ECF ELECTRONIC FILING
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10 Copies sent via BNC to:
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11 ATTN: OFFICER OR MANAGING AGENT
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